Supreme Court, U.S.
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No. 95-987

In the

Supreme Court of the United States

October Term, 1995

Clark Garen,

Petitioner,

vs.

Supreme Court of Nevada; Board of Bar Examiners of the State Bar of Nevada,

Respondent.

On Petition for Writ of Certiorari
To the Nevada Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether denying an applicant for admission to practice law in a state for failure to discharge a legally valid financial obligation imposed after notice and hearing, for using letterhead listing the applicant as "attorney at law" with a Nevada address with no limiting language describing that the applicant is **not** licensed in the state of Nevada, and for failing to adequately investigate the requirements and licenses necessary to operate a "900" tarot card telephone service raises a substantial question regarding the applicant's constitutional rights under the Due Process and Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution?

2. Whether the bare allegation, without factual or legal support, that Nevada utilizes a different standard to evaluate the moral character and fitness of non-A.B.A. law school graduates than that which is utilized for A.B.A. law school graduates is sufficient to allege a violation of an unstated U.S. Constitutional provision?

3. Whether the State has a legitimate interest in protecting, by statute, the confidentiality of information concerning persons who apply to practice law in the state of Nevada by keeping information regarding moral character and fitness investigations and hearings of applicants to that state's bar confidential unless the person applying for admission waives this confidentiality?

4. Does a state statute providing for appeal to the state supreme court of adverse recommendations affecting applicants for admission to the practice of law violate the Due Process or Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it does not provide for a "preliminary decision" prior to entry of formal Findings of Fact, Conclusions of Law and Recommendations by a hearing panel recommending denial of admission from which the appeal must be taken?

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, respectfully submits this brief in opposition to the petition for writ of certiorari to the Supreme Court of the Unites States that was filed on December 21, 1995, by Clark Garen, the Petitioner.

I. JURISDICTION OF THIS COURT

This Court does not have jurisdiction over this matter to issue the Writ of Certiorari pursuant to 28 U.S.C. 1254(1) (1988) because this case is not a case stemming from a final judgment or decree rendered in the Courts of Appeals as required by that section.

II. STATEMENT OF THE CASE

A. Procedural History

Petitioner received a juris doctor degree from the University of West Los Angeles School of Law, Culver City, California, in 1971. The University of West Los Angeles is a law school that is not accredited by the American Bar Association ("ABA"). Petitioner was admitted to the California State Bar in 1972 and to the State Bar of Texas in 1985. In 1993, Petitioner earned an LL.M in Taxation from Golden Gate University which is accredited by the ABA.

In 1993, Petitioner applied for a waiver of Nevada Supreme Court Rule ("NSCR") 51(3) which requires that all applicants for admission to practice law in the state of Nevada must have received a bachelor of laws or equivalent degree from a law school approved by the ABA. Petitioner's Request for Waiver was deemed untimely for the 1993 bar examination and was denied by the Supreme Court of Nevada on May 28, 1993. The Court referred the Petition to the Committee on Functional Equivalency, a sub-committee of the Nevada Board of Bar Examiners, for an appropriate

investigation and report regarding Petitioner's arguments respecting the 1994 Nevada Bar Examination.

On March 9, 1994, a hearing was held before the Committee on Functional Equivalency of the State Bar of Nevada. The Committee filed its report recommending denial of the waiver with the Supreme Court of Nevada on April 5, 1994. See Petitioner's Appendix D. Based upon testimony and evidence adduced at the hearing, the Committee found that Petitioner's legal education he received from the University of West Los Angeles School of Law was not the functional equivalent of a legal education received at an ABA-accredited law school as required by NSCR 51(7). The Committee also found that Petitioner's LL.M degree in taxation was not functionally equivalent as required by NSCR 51(7). The Committee further found that Petitioner's education, training, experience and prior practice was not sufficient to justify a waiver of NSCR 51(3). Finally, the Committee concluded that, based upon the limited evidence provided in the hearing, Petitioner was not in compliance with NSCR 51(4) regarding the moral character and fitness requirements of NSCR 51(7)(c)(1), and that a full hearing regarding applicant's moral character and fitness would be required. Petitioner appealed this recommendation to the Supreme Court of Nevada. On June 17, 1994, the Supreme Court of Nevada granted Petitioner's request for waiver of NSCR 51(3) (Petitioner's Appendix F) stating that Petitioner's legal education, while not functionally equivalent to that of an ABA-accredited institution, had been sufficiently augmented by Petitioner's additional education and experience to uphold a waiver of NSCR 51(3). The Supreme Court of Nevada then referred Petitioner to the Committee on

Moral Character and Fitness for review pursuant to the Committee on Functional Equivalency's recommendation.

On August 19, 1994, the Committee on Moral Character and Fitness (hereinafter "C & F Committee") convened a hearing to determine if Petitioner was morally fit to practice law in Nevada in accordance with NSCR 51(4). The hearing was recessed and the record was kept open to allow Petitioner to submit additional evidence regarding two outstanding liens on property he sold in California and also for receipt of a Certificate of Good Standing from the state of California upon resolution of a disciplinary complaint that was then pending in California. The request for supplemental information was fully complied with on or before early December, 1994. On or about December 20, 1994, the Committee recommended that Petitioner be denied admission to the State Bar of Nevada for failure to demonstrate his good moral character and fitness pursuant to NSCR 51(4).

On January 24, 1995, Petitioner filed a Verified Petition under NSCR 64(21) (sic) appealing the finding by the Committee that Petitioner did not meet the requirements of NSCR 51(4). This matter was fully briefed by the parties and, on October 5, 1995, the Supreme Court of Nevada issued an Order Denying Petition and adopted the recommendation of the Committee on Moral Character and Fitness denying Petitioner's application for admission to practice law in the state of Nevada.

B. Petitioner Failed to Raise Federal Questions Before the Supreme Court of Nevada

Petitioner's appeal to the Supreme Court of Nevada regarding his denial upon moral character and fitness grounds (Petitioner's Appendix I) failed to raise, in its entirety, any federal questions or U.S. Constitutional issues or arguments relating to Respondent's Questions Presented Numbers 1, 2 and 4 (Petitioner's Questions Presented Numbers 1,2,3 and 5). Regarding Respondent's Question Presented Number 3 (Petitioner's Number 4), Petitioner alleged in his brief to the Nevada Supreme Court the issue of "SCR 70.5 Establishing Confidentiality of Opinions on Petitions Under Rules 57(1)(f) is a Denial of Due Process to Petitioner." Petitioner's total argument as contained within this section is as follows:

> Procedural due process requires that the process be fair. The hearing and appeal process violates your Petitioner's right to due process because Petitioner was not adequately notified of the nature and character of evidence that this Court has previously accepted under S.C.R. 64(2) to demonstrate that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys.

Respondent's Appendix I, pg. 23.

No additional facts, citations to the record, case law, statute or constitutional provisions are alleged or provided. The Supreme Court of Nevada, in its Order Denying Petition, points to the total failure to allege facts or law regarding this issue and rules that "(G)aren cites no support for this contention. This court therefore does not have to address the contention." Respondent's Appendix A, pg. 2.

III. STATEMENT OF RELEVANT FACTS

A. Committee on Functional Equivalency Hearing

[All references in this section are to the Record on Appeal filed with the Supreme Court of Nevada regarding Petitioner's Application for waiver of NSCR 51(3)]

By order of the Supreme Court of Nevada, the Committee on Functional Equivalency is charged with the responsibility to determine whether the legal education received at a non-ABA accredited law school is the functional equivalent to that of an ABA-accredited law school, and, whether an applicant otherwise complies with all requirements for admission to practice law in the state of Nevada. NSCR 51(7)(c). Petitioner appeared before the Committee on Functional Equivalency on March 4, 1994. At the hearing, Petitioner testified and also presented four witnesses.

The Committee questioned Petitioner regarding letterhead he was utilizing which is reproduced and attached herein as Respondent's Appendix 1. The letterhead, on the top left-hand side, lists Petitioner as "attorney at law" with "advertising agency" printed on the next line, and next lists a Las Vegas, Nevada address. Also at the top of the letterhead in smaller letters is the language "admitted to

practice in California and Texas." The letterhead does not designate that Petitioner is not licensed to practice law in Nevada. On the top right-hand side of the letterhead, there is a drawing of a slot machine with Petitioner's 1-900 number and additional information contained on the front of the slot machine. Finally, below the slot machine, in much smaller letters, is "Clark Garen, Attorney at Law, Las Vegas, Nevada."

Petitioner testified that the purpose for the letterhead was to secure advertising for his 900-numbers. He testified that, as an advertising agency, he could secure a reduction in the price of the advertising. However, Petitioner also stated that he really does not have an advertising agency per se, except to secure advertising for his own 900-numbers. III ROA 43:2-10, and 103:20-24. Petitioner's 900-numbers include a Las Vegas tourist information line, a line that provides the time, a line that performs computerized tarot card readings, a line that provides live tarot card readings, a live conversation line where the callers may speak with females and, in California, a polling line on drug legalization. III ROA pgs. 54, 57, 105, and 112. Finally, Petitioner testified that none of the 900-numbers have a business license. III ROA 114:14-19.

Petitioner testified that he is not required by the Federal Trade Commission rules, when advertising his 900-number, to list that he is an attorney at law. III ROA 44:17-19. Petitioner testified that he may have used the letterhead in legal matters and also that "I don't know what matters I've used it on." III ROA 46:11-17. Petitioner's general testimony was that, although he did not know when this letterhead might have been used, it was not used for the

practice of law in the state of Nevada for cases that would require a Nevada license.

Petitioner admitted using the letterhead in a letter sent to an attorney in Texas that did not relate to his 900-number business but was in fact on behalf of a client. Petitioner stated that the recipient of the letter was not misled as to whether Petitioner was licensed in Nevada and that the recipient, a trustee in a bankruptcy action for one of Petitioner's clients, would not care. III ROA 45-46:18-6.

Petitioner testified that he employs Jon P. Thornburgh as a part-time lawyer in both California and Nevada. III ROA 39:1-16, 52:10-21. Petitioner stated that he essentially only has one client in California, J.J. MacIntyre Company, which is a collection agency owned by his client, James B. Fitzpatrick, and that Petitioner's law practice is a collection-type firm. III ROA 41:6-15. Petitioner also testified that the Las Vegas office is shared with Mr. Fitzpatrick who actually lives in Nevada, III ROA 47:17-18, that Petitioner sits on the Board of Directors of the J.J. MacIntyre Company and may also be an officer of the corporation, but that he does not give the board legal advice regarding matters in the state of Nevada, III ROA 49:16-25.

Gerald Smith testified on behalf of Petitioner as a satisfied client, as did Mary McGee and James B. Fitzpatrick. Ms. McGee also testified that she met Petitioner in college and that, when she lives in Las Vegas, which is fifty percent of the time, she lives at Petitioner's Las Vegas home. III ROA 173:21-24 and 176:1-20

Jon Thornburgh testified that he was an attorney licensed in Arizona, Nevada and California, III ROA 180:10-

13, and that he has been employed as an airline pilot since 1976. III ROA 186:9. Mr. Thornburgh did not take a bar examination until 1984 after his law school graduation in 1978 because of his airline job. III ROA 187:1-5. Thornburgh testified that he has not practiced law except for one year from 1984 to 1985. During that time, although still employed for an airline, he had an office with Petitioner from which he worked part-time for no salary in exchange for Petitioner's assistance with Thornburgh's divorce. III ROA 189-190. Thornburgh testified that he has never practiced law in Nevada, III ROA 193:12-14, and never had a case in Nevada or given advice to a Nevada client, although Petitioner has always offered him the use of his office, III ROA 194:6-20.

Apparently realizing the conflicts between Petitioner's and Mr. Thornburgh's prior testimony regarding Petitioner's association with Mr. Thornburgh in the practice of law in Nevada, Petitioner and Mr. Thornburgh filed supplemental Declarations with the C & F Committee on August 19, 1994, the day of the C & F Hearing. Petitioner and Mr. Thornburgh attempted to address the above-recited conflicting testimony. In Petitioner's Appendix B, pp. 37-31, Mr. Thornburgh states that Petitioner has always made space available for him on an as-needed basis and that whenever Thornburgh would make a Nevada court appearance, he would designate Petitioner's Nevada office as his address of record. Mr. Thornburgh further declares that Petitioner did refer some Nevada residents to him for legal representation but that he declined to accept those matters on behalf of the firm due to scheduling problems.

Petitioner's supplemental declaration is also filed on August 19, 1994 and is in Petitioner's Appendix B, pp. 41-

49. In the Declaration, Petitioner states that he retired from the practice of law after his first California based 900-number was launched and it generated a net income of $38,000 in the first ten days. He then retired to Nevada due to the fact that California has a state income tax and Nevada does not. He states that he testified before the Functional Equivalency Committee that any law practiced by the firm in Nevada was performed by Mr. Thornburgh and that Mr. Thornburgh's testimony that he had never practiced law in Nevada was not contradictory to Petitioner's testimony. Rather, he asserts that he intended to indicate that if any legal work had been performed in Nevada, it would have been done by Mr. Thornburgh and that Petitioner, at the time, had no actual knowledge of whether Mr. Thornburgh had ever practiced law in Nevada.

B. Committee on Moral Character and Fitness Hearing

[All references herein are to the Record on Appeal filed with the Supreme Court of Nevada regarding Petitioner's Moral Character and Fitness Hearing]

Petitioner's hearing before the C & F Committee was duly noticed and held August 19, 1994. Petitioner called no witnesses. Much of Petitioner's testimony was in further explanation of the testimony taken before the Functional Equivalency Committee; of which the C & F Committee had transcripts as part of the official record of this case.

Petitioner testified that he does not hold a business license from the City of Las Vegas or the County of Clark, II ROA 6:9-14, and that he had some kind of license from the state but did not know what type of license it was other than it is "whatever goes along with filing corporation

papers" II ROA 6:22-24. He testified that he made an anonymous telephone call to the County licensing agency regarding his tarot card 900-number but that the agency could not ascertain if he was a telephone answering service or a fortune teller. He states that he got the idea that if he did not fit into any of the categories "I was probably going to have a fair amount of problems" if he filed an application. II ROA 13:7-14. Petitioner also testified that he did not inquire whether running a business out of his home in a residential area would violate any zoning laws. II ROA 15:6-11.

Petitioner testified that if he operated a law business in Nevada for which he advertised that "...if you have problems in California and Texas, come on in, I'll help you in Las Vegas, I would certainly concede that that is conducting a law business here that probably requires a law license, even though the activity is somewhere else, because the clients are here." II ROA 24:11-19. Petitioner testified that the letterhead reproduced in Respondent's Appendix 1 was probably used in connection with his California or Texas matters and that it may have gone to clients, counsel for opposing parties, or it may have gone to the courts. II ROA 28:16-20. Petitioner admitted that the letterhead in question is still being used by him. II ROA 34:14-17. He further testified that although he does not recall it being sent to anyone in Nevada, "it may have gone". II ROA 36-37:24-2. Petitioner also testified that his reasoning for listing that he was an attorney on the letterhead advertising his 900-number was that a publication might be more willing to accept his advertising if it felt that, as an attorney, he were credible or non-controversial by virtue of that fact. II ROA 44-9-13.

Petitioner testified to the existence of two property tax liens in Los Angeles County, California regarding properties he sold. He stated that the liens were not discharged and that he has no intention of either discharging or challenging the liens. II ROA 55:9-24. He testified that he went through a hearing process and that he "didn't feel he got a fair hearing from the board on the issue" but that he did in fact present his case and lost. He did not appeal the decision. II ROA 57:1-23. He further testified that California would end up collecting eventually when he sold something else in the county but also stated that he did not own any other assets in the county. He anticipated that he would eventually receive some property through inheritance. II ROA 57-58. Petitioner agreed that he would not advise a client to adopt his attitude if an adverse result were rendered in the client's case, but that this was his own affair and "this is how I elected to handle it". Petitioner testified that although he did not know the exact amount of the obligation, it was "a couple, three thousand dollars." II ROA 58:8-28.

IV ARGUMENT

A. Petitioner Has Failed to Properly Invoke the Jurisdiction of this Court.

Petitioner has failed in two substantial respects to preserve and present the claims stated in his Petition for Writ of Certiorari. First, Petitioner did not raise and/or provide facts or authority for these alleged constitutional claims before the Supreme Court of Nevada for its initial determination. As will also be noticed in the present Petition before this Court, although Petitioner listed various issues in the Table of Contents to his Brief to the Supreme Court of

Nevada, he either failed to thereafter mention the issue again or did so with conclusory sentences unsupported by facts or citation to legal authority.

Secondly, the Certiorari jurisdiction of this Court is improperly invoked by Petitioner under 28 U.S.C. § 1254(1). Jurisdiction may only be invoked by Petitioner under 28 U.S.C. § 1257(a). Petitioner not only refers to the wrong Code section for invocation of the Court's exercise of Certiorari jurisdiction, he has also wholly failed to "draw into question" any "statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States..." 28 U.S.C. §1257(a).

B. **Whether denying an applicant admission to practice law in a state for (A) failure to discharge a legally valid financial obligation imposed after notice and hearing, (B) for using letterhead listing the applicant as "attorney at law" with a Nevada address with no limiting language describing that the applicant is *not* licensed in the State of Nevada, and (C) for failing to adequately investigate the requirements and licenses necessary to operate a "900" tarot-card telephone service raises a substantial question regarding the applicant's constitutional rights under the Due Process and Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.**

Petitioner declares that denial of admission to practice law in the state of Nevada based on these three reasons violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution in that Nevada's application of the "good moral character" standard is

"arbitrary and capricious." Thus, each reason is addressed to show that Petitioner's denial was not arbitrary and capricious.

(1) FAILURE TO DISCHARGE A LEGALLY VALID FINANCIAL OBLIGATION

"The conduct of a bar applicant in satisfying his financial obligations has been widely recognized as a relevant factor in assessing good moral character." *Application of Gahan*, 279 N.W.2d 826, 830 (Minn. 1979), citing *In re Heller*, 333 A.2d 401 (D.C.Ct.App.), certiorari denied, 423 U.S. 840, 96 S.Ct. 70 (1975); *See also In re Cheek*, 246 Or. 433, 425 P.2d 763 (1967). The reasoning for this is that: "The failure of a person to honor his legal commitments adversely reflects on his ability to practice law, evincing a disregard for the rights of others." *Application of Gahan*, 279 N.W.2d 826, 830 (Minn. 1979), citing *Matter of Connor, Ind.*, 358 N.E.2d 120 (1976).

The record establishes that Petitioner admits to his choice to let languish valid property tax liens assessed against property he once owned Los Angeles County, California. II ROA 54:19-25, 55-6:20-4. The liens are in an amount of approximately two-thousand dollars. II ROA 59:19-22. However, Petitioner sold this property prior to the attachment of these liens. II ROA 55:9-16. Thus, the liens could not be satisfied by sale of the property. Consequently, pursuant to California law, the liens have attached to respondent personally. II ROA 55:9-16. Petitioner challenged the assessment of the property and was permitted to put forth his factual and legal arguments at a subsequent hearing. II ROA 57:1-14. As a result of the hearing, Petitioner in fact received a reduction in the value at which his property was

assessed. The assessment value of his property was decreased from $276,000 to $232,000. I ROA 103-4. Yet, Petitioner testified to the C & F Committee that he had "lost" the hearing. II ROA 57:16. Petitioner further stated that he did not seek an appeal of that decision. II ROA 57:17-20.

Both of these liens were filed against Petitioner in early 1994. II ROA 54:9-18. Rather than discharging these liens with a small portion of the $38,000.00 earned during the first ten (10) days of the opening of his in-home, unlicensed "Tarot-card" telephone business, Petitioner reiterates his conscious choice not to pay these liens in his testimony to the C & F Committee. II ROA 56:3-4.

In the instant case, it is not the position of Respondent that Petitioner's application was denied solely for failure to pay his California taxes, though, in light of the case law presented herein, it could have been so denied. However, Respondent's position is that Petitioner's application was also denied for using misleading letterhead designating him as "Attorney at Law" without limiting language that he is not licensed to practice in Nevada and for operating numerous "900" telephone numbers without adequately investigating the requirements and licenses necessary to operate such a business. Petitioner's failure to pay his property tax is simply one of the factors considered by the C & F Committee.

In some states, such conduct by an applicant constitutes the sole reason for denial of admission. In *Florida Bd. of Bar Examiners re G.W.L.*, 364 So.2d 454 (Fla. 1978), the Florida Supreme Court denied the admission to practice law of an applicant for failing to repay his student

loans by filing a premature bankruptcy petition. In that opinion the court stated:

> In our view, a finding of a lack of "good moral character" should ***not*** be restricted to those acts that reflect moral turpitude.
>
> . . .
>
> The record before us reflects that the petitioner ***suffered no unusual misfortune or financial catastrophe prior to his filing the bankruptcy petition. . . The filing of the bankruptcy petition was not illegal,*** but in our view it was done in such a morally reprehensible fashion that it directly affects his fitness to practice law.
>
> . . .
>
> . . .
>
> The petitioner's course of conduct in these personal affairs raises serious questions concerning the propriety of his being a counselor to others in their legal affairs, and ***is rationally connected to his fitness to practice law.***

Florida Bd. of Bar Examiners re G.W.L., 364 So.2d 454, 458-59 (Fla. 1978). (Emphasis added). In rendering its decision, the Florida Supreme court noted:

> [I]t must be with recognition that it is not the act of filing for bankruptcy but the circumstances surrounding this particular bankruptcy application that demonstrate a lack of good moral character and justify the Board's decision. *G.W.L.* at 455.

In *Application of Gahan*, 279 N.W.2d 826 (Minn. 1979)(a case which cites *G.W.L.*), the Supreme Court of

Minnesota denied admission to applicant Gahan, though Gahan had successfully completed the Minnesota Bar Examination, solely for failure to satisfy his legal obligations by having his student loans discharged via bankruptcy. As for its consideration of Gahan's actions in light of his bankruptcy, the court made it clear that a denial to admission to the bar of the state of Minnesota cannot be based on the fact that an applicant has filed for bankruptcy nor may it be based on an applicant's refusal to reinstate an applicant's financial obligations discharged in bankruptcy. *Gahan* at 828. The court correctly noted "(A)ny refusal so grounded would violate the Supremacy Clause of the United State Constitution since applicable Federal law clearly prohibits such a result." *Gahan* at 828.

However, the court then stated the following when discussing Gahan's moral integrity for discharging his indebtedness via bankruptcy in the absence of a showing by Gahan of a compelling hardship beyond his control justifying such a discharge:

> A flagrant disregard of this repayment responsibility by the loan recipient indicates . . . a lack of moral commitment to the rights of other students and particularly the rights of creditors. Such flagrant financial irresponsibility reflects adversely on an applicant's ability to manage financial matters and reflects adversely on his commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law. ***It is appropriate to prevent problems from such irresponsibility by denying admission, rather than seek to remedy the problem after it occurs and victimizes a client.***

Gahan at 831.(Emphasis added). One of the central reasons for denying Gahan's admission was due to the fact that though he had the money to pay this debt, he chose instead to discharge it in bankruptcy. *Gahan* at 831-32.

In the instant case, Petitioner cites various passages from numerous Nevada cases presumably in support of his argument that under Nevada law, the State Bar of Nevada is precluded from denying him admission solely because of his failure to pay valid California property taxes. For example, Petitioner cites *Ex Parte Abbatangelo*, 80 Nev. 584, 397 P.2d 182 (1964), in support of this proposition. Contrary to Petitioner's position, *Abbatangelo* exemplifies the fact that Nevada aligns itself with other jurisdictions, such as Florida and Minnesota, which would deny admission solely for failure to satisfy an applicant's valid financial obligations ***where there is no showing by that applicant of a compelling hardship beyond his or her control.*** In his Petition, Petitioner states that:

> The Nevada Bar held:
>
> "Failure to satisfy the Los Angeles County tax liens demonstrates, in itself, that the applicant has failed to carry the burden of establishing his fitness to practice law in the State of Nevada."
>
> The Nevada Supreme Court disagreed in Ex Parte Abbatangelo . . ., where an attorney was admitted to practice in Nevada despite ***proven*** forgery and failure to support the attorney's wife and minor children.

(Petition pp.15-16). (Emphasis added). Petitioner then implies that admission of Abbatangelo to the Nevada State

Bar was due to the numerous favorable communications from many Pennsylvania and Las Vegas attorneys. Petitioner also implies that these past bad acts of Abbatangelo were therefore viewed as inconsequential by the Supreme Court of Nevada in light of these favorable communications. This argument exemplifies Petitioner's lack of candor to even this Court. The true reason Abbatangelo was admitted to practice law in Nevada was not because of numerous letters of recommendation, but because he was later absolved of the alleged forgery when his ex-wife admitted in an affidavit to the Supreme Court of Nevada that her "accusation of forgery was done for the sole purpose of aggravating Petitioner [Abbatangelo]." *Abbatangelo* at 183. Furthermore, the court in *Abbatangelo* found that she was "well aware of all bank loans obtained by petitioner when signing her name; that she purchased items with the proceeds of these loans; and that petitioner was of high professional moral character." *Abbatangelo* at 183. The court then made it a point to note that ". . . [T]he adverse recommendation of the board was due ***chiefly*** to the situation created by [his ex-wife's] conduct." *Id.* However, Petitioner conveniently omits these facts from his Petition.

As for Abbatangelo's failure to pay child support and alimony, the court stated that it was ***"not a matter of choice."*** *Id.* (Emphasis added). In this respect, the Supreme Court of Nevada found:

> After arriving in Nevada, his total income between September 1, 1961 and December 23, 1961 was about $600. During the following month he was unemployed. From January 27, 1962 until the end of April 1962 he earned approximately $300 per month. ***From April through August 1962 he made small***

> ***monthly payments to Victoria for support. In October 1962 she received $500 which had been owed to petitioner and which he directed to be paid to her. Subsequent to the action of the board, petitioner borrowed money and paid all existing obligations for alimony and child support.*** We believe that under the circumstances of this case, and particularly because of the conduct of Victoria, petitioner should not be penalized to the extent of denying him admission to the Nevada state bar because of said delinquency regarding alimony and child support. Although he did sign his wife's name in connection with the Pittsburgh bank loan, it is apparent that he did it with her consent and ***there is no evidence that he intended to defraud the bank.***

Id. at 184. (Emphasis added). Aside from being vindicated of the accusation of forgery, Abbatangelo ***paid*** his child support and alimony despite his financial difficulties. Once again, Petitioner conveniently omits these facts from his Petition.

In the instant case, Petitioner has not paid his taxes despite his admittedly successful unlicensed "900" businesses. Such conduct leads one to the logical conclusion that Petitioner ***consciously chooses*** not to do so. This in-turn leads one to the logical conclusion that Petitioner manifests a flagrant disregard for his creditors as well as for the rights of others. Hence, there exists a rational connection between this conduct and his fitness to practice law.

(2) LETTERHEAD

Petitioner cites *In re Waters*, 84 Nev. 712, 447 P.2d 661 (1968), in support of his use of letterhead designating him as an Attorney without designating that he is unlicensed in Nevada. Again, Petitioner conveniently leaves out important facts that distinguish this case from the instant and mis-analogizes them to the *Waters* case. First, Respondent did not charge Petitioner with the unauthorized practice of law, nor does Respondent use Petitioner's letterhead to support the same, as did Respondent in *Waters*.

Second, Petitioner leaves out the fact that in *In re Waters*, the recipients of Waters' letterhead "believed that Waters was a Texas lawyer and so testified on deposition." *Id.* at 664. To date, neither Respondent nor Petitioner know to whom Petitioner sent this letterhead. Nor does Respondent know if any recipients of this letterhead were aware of Petitioner's licensure status. On March 3, 1994, Petitioner stated at the Functional Equivalency hearing: "I don't know what matters I've used it on." II ROA 46-11-17. On August 19, 1994, before the C & F Committee, the following dialogue between the Chairman and Petitioner occurred:

> CHAIRMAN: Were you sending it [the letterhead] to anyone in the State of Nevada?
>
> APPLICANT: I don't remember sending it to anybody in the State of Nevada. It may have gone, but I don't remember sending it to anybody there.

II ROA 36-37. Yet petitioner makes the following definite statement in his Petition: "Petitioner made no solicitations

and corresponded ***only*** with existing clients or opposing attorneys in California and Texas." (Petition for Writ p.15). (Emphasis added). Thus, Petitioner provides this Court with information that is at odds with his testimony before the C & F Committee.

Third, Petitioner also states: "The conduct of the applicant in ***In re Waters***, supra, is more egregious than that of Petitioner." (See Petition for Writ p.15). Petitioner fails to point out that much of the conduct for which Waters was denied admission occurred many years prior to Waters' application for admission: "More than ten years ago the applicant attempted to deceive the University of Texas School of Law . . ." ***Waters*** at 662-63. Moreover, Waters was allowed into another law school despite its full knowledge of the previously mentioned deception. *Id.* at 663. Thus, Waters was apparently deemed rehabilitated or given a second chance for this deception.

In the instant case, it is Petitioner's ***current*** conduct reflects adversely on his character and fitness to practice law. Respondent has not denied Petitioner admission to practice law in Nevada based on misconduct occurring more than 10 years ago but rather on the basis of his **current** moral character and fitness.

(3) PETITIONER'S VARIOUS UNLICENSED "900" TELEPHONE SERVICES

On March 3, 1994, the Functional Equivalency Committee brought to Petitioner's attention the fact that Petitioner's numerous 900-number businesses were unlicensed. III ROA 114:14-19. Petitioner responded to questions regarding whether he has a business license with

testimony to the effect that he thought he had a license from the State of Nevada but he was unsure whether he had one from the City of Las Vegas or County of Clark. III ROA 114-115:16-16.

Five months later, on August 19, 1994, the C & F Committee inquired as to whether Petitioner had acquired a business license from either the City of Las Vegas or Clark County, Nevada, to which Petitioner responded: "I don't believe I do. I think that the only license I think we have is one that we got from the State." II ROA 6:9-14. Petitioner testified that he made an anonymous telephone call to the County licensing agency regarding his tarot card 900-number but that the agency could not ascertain if he was a telephone answering service or a fortune teller. He then states that his reason for not licensing was because he got the idea that if he did not fit into any categories that he was "probably going to have a fair amount of problems" with filing the application. II ROA 13:7-14. Petitioner also testified that he did not inquire as to whether running a business out of his home, located in a residential area, would violate any zoning laws. II ROA 15:6-11.

The relevant portion of Section 6.04.010 of the Clark County Code (Appendix 2) states the following:

> It is ***unlawful*** for any person, firm, association, partnership, or corporation, to commence, carry on, engage in or continue . . . in the county, outside the incorporated cities and towns, both within and without unincorporated cities and towns, ***any business***, trade, occupation or employment upon which a license tax is imposed . . . without first

> paying such license tax and procuring such license as hereinafter provided.

Clark County Code § 6.04.010 (1983). (Emphasis added). Further, § 6.04.110 of the Clark County Code prohibits the issuance of a business license "unless the applicant shall have a fixed place of business in a proper zone . . ." Clark County Code § 6.04.110 (1980). (Appendix 2). Failure to comply with these provisions is a misdemeanor. Clark County, NV., Code § 6.04.150 (Ord. 1608 § 4, 1994,:Ord. 631 § 1, 1979). (Appendix 2).

A reasonable inference may be drawn from Petitioner's own testimony and the fact that between the March 3, 1994, Functional Equivalency hearing and the August 19, 1994, Moral Character and Fitness hearing. The inference is that Petitioner intends to allow the matter regarding his noncompliance with the Clark County business license code to languish just as he has with his California property taxes. This further evidences not only his flagrant disregard to Clark County as a possible legitimate creditor, but also his flagrant disregard for the law. Thus, there exists a rational connection between this willful noncompliance of Petitioner and his fitness to practice law.

C. Whether the bare allegation, without factual or legal support, that Nevada utilizes a different standard to evaluate the character and moral fitness of non-ABA law school graduates than that which is utilized for ABA law school graduates is sufficient to allege a violation of an unstated U.S. Constitutional provision.

This issue was not presented to the Supreme Court of Nevada for consideration, see Petitioner's Appendix A and I, and should therefore not be properly considered in Petitioner's Petition for Writ of Certiorari.

In his Petition for Writ of Certiorari, Petitioner states that he was denied admission because the State of Nevada either does not like Petitioner or "they don't like his educational background, or both." Petition, pg. 23. Petitioner then asserts that a political problem was created when Nevada Law School graduates, which was unaccredited by the ABA, were allowed to take the Nevada bar examination after a successful challenge in the Supreme Court of Nevada. Petitioner cites *Bennett v. State Bar*, 103 Nev. 519, 746 P.2d 143 (1987) to support his position that a "political problem" exits or existed in the state of Nevada. However, Petitioner's opinion that such a political problem existed is not related by Petitioner to his assertion that Nevada employs different standards for ABA and non-ABA educated students in assessing moral character and fitness.

Nowhere in his Petition does Petitioner allege facts or law which would indicate how he was treated differently from a graduate of an ABA-accredited institution nor any

facts or law that would support his contention that different standards exist. Petitioner has failed to present his argument on this issue and, as such, Respondent is in the position of proving that something does not exist when there is absolutely no evidence, legal or factual, that would support the accusation that it does exist.

D. Whether the State has a legitimate interest in protecting the confidentiality of information concerning persons who apply to practice law in the state of Nevada by keeping decisions regarding moral character and fitness investigations and hearings of applicants to that state's bar confidential unless the person applying for admission waives this confidentiality.

Again, Petitioner did not address this issue before the Supreme Court of Nevada. Although he raised the issue in his Table of Contents before the Supreme Court of Nevada (Petitioner's Appendix I) his sole argument was limited to one paragraph (Appendix I, pg. 23) that merely recited his argument that he was denied due process because the files of the State Bar of Nevada are confidential pursuant to NSCR 70.5 (Respondent's Appendix 2). Nowhere in the Brief before the Supreme Court of Nevada is any citation to the United States Constitution nor case authority from anywhere outside the state of Nevada.

In the Petition for Writ of Certiorari, Petitioner's argument regarding this issue is limited to the following:

> Rule 70.5 of the Nevada Supreme Court Rules

> (Appendix C) makes all disciplinary and admission proceedings confidential and not reported. This deprived Petitioner of procedural due process because no judicial interpretations of the rules are available. Rule 70.5 allows the State Bar of Nevada and the Nevada Supreme Court to make arbitrary, capricious, and **different** decisions in private without public scrutiny. (Emphasis in the original.)

(Although Petitioner claims to have reproduced NSCR 70.5 in Appendix C, it is not contained therein but is reproduced in Respondent's Appendix 2.)

NSCR 70.5 recites that an applicant to practice law in the state of Nevada has the **right** to have his or her admission papers, the results of any investigation, the applicant's grades, and any petitions for review filed in the supreme court remain confidential if he or she so chooses. The applicant can waive the confidentiality protections afforded by this Rule if desired. This is a protection for the applicant which is designed to preserve the confidentiality of the investigation and examination process, not to "hide" anything from an applicant. It is only the extensive, personal information required within the certification process that is intended to be kept confidential, not the Supreme Court of Nevada decisions stemming therefrom. Indeed, Petitioner had no trouble citing to Nevada cases dealing with the application process, see Petitioner's Table of Authorities, pg.

xiii. Petitioner is not being candid with this Court in his claim that no judicial interpretations of the rules are available. Once again, Petitioner's argument is not developed within his Petition and is not supported by either the facts of this case or the law.

E. Does a state statute providing for appeal to the state supreme court of adverse recommendations affecting applicants for admission to the practice of law violate the Due Process or Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it does not provide for a "preliminary decision" prior to entry of formal Findings of Fact, Conclusions of law and Recommendations by a hearing panel recommending denial of admission from which the appeal must be taken?

This issue, like the other issues presented in the Petition for Writ of Certiorari, was not presented to the Supreme Court of Nevada. In fact, the Brief filed by Petitioner before that Court (Petitioner's Appendix I) does not mention this issue even in passing. In addition, the Petition for Writ of Certiorari also fails to mention this issue except in Petitioner's Questions Presented.

Respondent knows of no provision, and Petitioner fails to mention any such provision, of the U.S. Constitution or federal law that requires any order of any tribunal to be preceded by a "preliminary decision" from which an aggrieved can attempt to argue or present new facts. An appeal of an adverse decision of the C & F Committee is required to originate from the Findings and Recommendations of the Committee, NSCR 64, not some "preliminary decision" that is not issued. Indeed, Petitioner

cites no legal authority that would even permit the Committee to issue such a "preliminary decision."

V. CONCLUSION

Petitioner has failed to properly invoke the jurisdiction of this Court as well as to validly present legal arguments, citation to relevant case authority or relevant facts that would support the invocation of this Court's Certiorari jurisdiction. His inability or failure to articulate legal or factual reasoning behind his Questions Presented to this Court make a response to his contentions especially difficult if not impossible as it is difficult to respond to the unknown or unstated.

In addition to the procedural limitations, Petitioner has failed to show that his denial for admission to practice law in the state of Nevada on moral character and fitness grounds was improper for reasons that contravene the Due Process or Equal Protection provisions of 14th Amendment to the United States Constitution. Instead, the denial of Petitioner's application was proper for reasons related to his current moral character and fitness.

On the basis of the foregoing, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully Submitted

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APPENDIX

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Rule 70.5. Confidentiality.

Except as otherwise provided by these rules, the contents of any application for admission to practice law in this state, the results of any investigation, including the transcript of any hearing, documentation regarding the application or applicant, and the grades of an individual applicant shall remain confidential. A petition for review filed in the supreme court pursuant to these rules shall remain confidential. An applicant may waive confidentiality with respect to such petition by filing a verified statement with the supreme court clerk.

Chapter 6.04

GENERAL PROVISIONS

Sections:

6.04.005	Definitions
6.04.010	License required.
6.04.020	Employees exempt.
6.04.030	Nonapplicable when.
6.04.040	Nonpayment-Liability-Debt to county.
6.04.050	Payment due-Notification-Affidavit concerning change of ownership or location.
6.04.060	Delinquency-Reinstatement-Special fees-Underestimates.
6.04.070	Transfer of ownership, change of location or business name -Fees.
6.04.080	Display of license.
6.04.090	Issuance-Revocation-Nonrenewal-Reasons.
6.04.095	Temporary license on transfer of ownership.
6.04.100	Revocation-Nonrenewal-Hearing-Limited license.
6.04.105	State License
6.04.110	Compliance with zoning.

6.04.120 Conducting business at location other than licensed.
6.04.130 Permanent place licenses for vending machines.
6.04.140 Penalty for violation.
6.04.150 Authority to issue citations.

6.04.005 Definitions. As used throughout this chapter, and Titles 4, 7, 8, 9 and 12, the words and terms have the meanings ascribed to them unless a different meaning clearly appears in the context where used, or unless specifically defined in an applicable sections.

"Applicant" means any person who has applied for a county business license, approval of suitability, work identification card or any permit.

"Application" means documentation notifying the county of intent to:

(1) Seek permission to engage in business;

(2) Seek approval of suitability;

(3) Seek work identification card or any permit.

"Board" means the board of county commissioner of Clark County, Nevada.

"Business" means any business, commercial enterprise, trade, occupation, calling, profession, vocation or activity engaged in, conducted or carried on by any person, agent or employee for the purpose of gain, benefit or advantage, either direct or indirect.

"Charitable organization" means an organization which:

(1) Has been in existence for more than three years;

(2) Has one hundred or more members;

(3) Is exempt from federal income tax pursuant to Section 501 of the United States Internal Revenue Code;

(4) Devotes its net earning exclusively to religious, charitable, scientific, literary, educational or fraternal purposes;

(5) Has received from the Secretary of State its certificate of nonprofit corporation, association or society.

"Corporation" includes and refers to any and all natural persons acting or purporting to act in any managerial capacity or exercising or purporting to exercise any control as to any or all of the day-to-day business operations and decisions of its corporate business in Clark County, Nevada whenever a background investigation is required for licensure of a corporation.

"County" means, unless otherwise indicated, that portion of Clark County outside the incorporated cities and towns, both within and without the unincorporated cities and towns.

"Department" means the department of business license of Clark County.

"Director" means the director of the department.

"Employee" means any person who performs services for another for hire, salary, wages or any other kind of compensation, whether or not the services are casual, temporary or permanent, and whether or not the contract of service is express or implied, oral or written, and/or when the employer withholds federal income tax.

"Establishment" means any business conducted in or upon any premises and includes any contiguous buildings, improvements, equipment and facilities used or maintained in connection with such business at the same location.

"Gross sales" means the gross volume of business from all sales, service and other business transactions as

measured by gross revenue and gross receipts.

"Gross revenue" means all revenue received by the business from sales, service and other business transactions minus deductions only for returns, refunds, state sales tax, and discounts, and allocation and apportionment of income for net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business or corporate stock tax which is subject to the tax jurisdiction of another state.

"License" means the document granting permission to the applicant to engage in business issued by or through the department.

"Licensee" means any person to whom a valid license has been issued pursuant to Titles 4, 6, 7, 8 or 9.

"License fee or license tax" means any money required by law to be paid to renew or maintain a current license.

"Location" means the place where the business is to be operated at or from.

"LVMPD" means the Las Vegas metropolitan police department.

Moral Turpitude. A crime involving "moral turpitude" is any crime, including conspiracy to commit the crime, which:

(1) Involves an overt act of intentional dishonesty or fraud for the purpose of personal gain; or

(2) Involves an act of baseness, vileness or depravity in private and social or public duties which a person owes to his fellow person or to society in general, contrary to the accepted rule of right and duty between person and persons.

In any license category or work identification card matter in which a conviction of a crime involving moral turpitude is grounds for disqualification for a license or work

identification card, the board may, upon receiving five affidavits testifying to the good moral character of the applicant and a letter, if an employee, from the licensee that acknowledges disclosure of any criminal history and a willingness to employ said applicant, grant such license or work identification card if the conviction occurred more than five years prior to the application pursuant to Chapter 6.10 or more than one year if pursuant to a specific chapter provision as to moral turpitude and, after reviewing the applicant's tax and procured a license according to the terms and provisions of this title, and such person shall be liable in a civil action in the name of the county as plaintiff, in any court of competent jurisdiction, for the recovery of the amount of license tax imposed by this title, and for the costs of suit. (Ord. 134 § 18, 1961)

6.04.050 Payment due - Notification - Affidavit concerning change of ownership or location. (a) All business required to have a license under the provisions of this code shall be notified, before the due date, of each license fee required; provided, however, that the failure to notify any lawful business shall not be held to waive the payment of a business license; and provided, further, that the actual receipt of such notice is in no case required.

(b) Any business licensed b the county and where there has been no change of ownership or location is required only to pay the license tax as set out in this title and notwithstanding other provisions of this title is not required to make application for a license, however, it is required to furnish to the director of business license the following information:

(1) An affidavit stating whether there has been any change in ownership in the business of the applicant or applicants during the preceding calendar year, and if there

has been any change, that such change was made in compliance with NRS 104, Article 6;

(2) If the applicant or applicants were engaged in business under a fictitious name, an affidavit that the applicant or applicants have complied with the provisions of NRS 602;

(3) Where the license tax depends upon the receipts or amount of the business which the applicant, or the firm of which he is a member, or for which he is attorney, or the association or corporation of which he is president, secretary or managing agent, will do, the applicant shall state under oath the amount of business which said business did do in the next preceding period for which the license may be issued. (Ord. 709 § 11, 1980: Ord. 621 § 11, 1979: Ord. 134 § 19, 1961)

6.04.060 Delinquency - Reinstatement - Special fees - Underestimates. (a) All licenses other than gambling and liquor licenses shall become delinquent if not paid within fifteen days after the due date. If payment is made after fifteen days and before thirty days after the due date, five percent of the license fee shall be assessed as a penalty charge. All licenses for which the fees have not been paid within thirty days after the due date shall be deemed revoked. Any such license shall not be reinstated until the five percent penalty fee and a ten percent reinstatement fee shall have been paid.

(b) In all cases where a material underestimate has been made b the licensee, the licensee making such material underestimate, or the company represented, shall be required to pay for a license for the next period for which the licenses may be issued, double the sum otherwise required and the director of business license shall have the power and authority to enter any store, building, or any other place in

which such business is being conducted at any time during business hours and have access to the books of such business for the purpose of ascertaining the amount of sales made. The information received from the licensee under the provisions of this section shall be confidential and available only to those county officials concerned in such matters. (Ord. 709 § 12, 1980: Ord. 621 § 12, 1979: Ord. 134 § 20, 1961)

6.04.070 Transfer of ownership, change of location or business name - Fees. (a) Upon the transfer of ownership of a business licensed under this title for which a license fee has already been paid, the license fee paid by the transferor shall be fifteen dollars. The transferee shall apply for the license and shall be entitled to receive the same upon the payment of the required fee; provided, that the transfer is approved by the director upon compliance with all provisions of this chapter.

(b) A licensee shall have the right to change the location of the licensed business, provided he shall obtain permission from the director. A licensee shall file an application upon a form to be provided by the director who shall approve such transfer if the new location meets all the requirements of this code; and provided further, such applicant shall pay a fifteen-dollar regulatory transfer fee upon filing of such application.

(c) A transfer of ownership or change in location shall be inspected and approved by the fire department and the building and zoning department to ensure safety and compliance with Section 25.04.260 and NRS 278.583; however, if a location is licensed for a particular type of business, the new owners conducting the same type of business at that location may not be required to obtain approval of zoning, building and fire.

(d) Changes in Corporate Officers, Directors and Stockholders. In the case of a corporate licenses, any and all changes in the officers or owners shall be reported to the director within twenty days of the appointment or election of such officers and directors, or acquisition by such stockholder or stockholders, as the case may be, and such officers, directors or stockholders shall be required to qualify for a license as required herein.

In the event fifty percent or more of the issued stock in a corporate licensee is sold, it shall be deemed a sale of the business, and the license shall expire. The corporation must apply for a license as a new applicant, although a temporary license may be issued pending a required investigation. (Ord. 1371 § 1, 1992: Ord. 709 § 13, 1980: Ord. 621 § 13, 1979: Ord. 578 § 2, 1978: Ord. 134 § 21, 1961)

6.04.080 Issuance - Revocation - Nonrenewal - Reasons. (a) All business licenses issued under the provisions of this title shall be subject to revocation or nonrenewal by the board of commissioners for any failure of such licensee, his agents, servants, or employees while engaged in the conduct of the licensed business, to comply with any of the provisions of this code.

(b) A business license issued to any licensee under the provisions of this title shall not be renewed, or shall be subject to revocation as the case may be, if such licensees shall maintain or carry on any business in any building or structure which is structurally unsafe, or not provided with adequate egress, or which constitutes a fire hazard, or which is otherwise dangerous to human life or safety, or which in relation to existing use constitutes a hazard to safety or health, or public welfare, by reasons of inadequate maintenance, dilapidation, obsolescence or abandonment; or

if such business is a nuisance, a menace to the public health or detrimental to the peace or morals of the county.

(c) The director shall not issue a new license or renew an existing license to any applicant to operate a business in any building location that has been determined by the

building inspector to be an unsafe building as defined herein, but shall promptly refer such application to the board of commissioners for appropriate action.

(d) The director shall not issue a new license to any applicant to operate a business when a state license is required for a profession until proof of the current state license is provided to the department by the applicant. If the state license is revoked, removed or relinquished, the county business license is automatically revoked.

(e) New applications will be approved or denied by the current planning division of the department of comprehensive planning within ten working days from receipt of inspection form prior to any licensing issuance or denial by the director.

(f) New applications will be approved or denied by the building, fire, and health departments (when applicable), within twenty working days from receipt of inspection form prior to any licensing issuance or denial by the board or director.

(g) All business licenses issued under the provisions of this title shall be subject to revocation or nonrenewal by the board of commissioners if the applicant has made false, misleading or fraudulent statements with respect to any material fact contained in the business license application.

The director and any other officer designated by him shall have the power and authority to enter any store,

building or other place in which such business is being conducted at any time during the business hours and have access to inspect the business for the purpose of ascertaining compliance with the provisions of the Clark County Code.

(h) New applications will be approved or denied by the director within forty-five working days of receipt of a complete application or referred to the board for approval or denial of license as required within sixty working days of receipt of a complete application unless a different time period is specifically provided within the appropriate licensing chapter. (Ord. 1608 § 1, 1994: Ord. 1448 § 1, 1992: Ord. 1367 § 1, 1992: Ord. 709 § 14, 1980: Ord. 621 § 14, 1979: Ord. 134 § 23, 1961)

6.04.095 Temporary license on transfer of ownership. (a) Nonregulated Businesses. In order to protect the goodwill, clientele and assets of a licensed business, the director may upon request and the filing of a complete application and payment of all fees, issue and temporary license for a period not to exceed forty-five working days.

Upon licensure, all conditions and restrictions imposed upon a former licensee are imposed upon the new licensee unless specifically modified by the authority imposing such conditions.

(b) Regulated Businesses. In order to protect the goodwill, clientele and assets of a licensed and operating business during investigation of a new or proposed owner, upon request the director may, upon the filing of a complete application and payment of all fees, issue a temporary license for a period not to exceed forty-five working days. The board may extend the temporary license of a regulated business for a period not to exceed ninety working days in total for the purpose of completing the application process.

Upon licensure, all conditions and restrictions imposed

upon a former licensee are imposed upon the new licensee unless specifically modified by the authority imposing such conditions. (Ord. 1608 § 2, 1994)

6.04.100 Revocation-Nonrenewal-Hearing-Limited license. The board of commissioners may upon complaint, or upon its own motion, cite any licensee to appear before it or its hearing officer at any time to show cause why the license of any licensee shall not be revoked or renewed, and at or before the hearing, written charges shall be made against the said licensee specifying therein the facts which form the basis of the charges. At such hearing, or any adjournment thereof, the licensee may present a reasonable number of witnesses, and such other evidence may be produced as may be relevant for the consideration of the board of commissioners.

After the hearing by the board or its hearing officer, the board may then grant, deny, revoke, or condition the license as it deems proper. As to businesses in unsafe buildings, the license shall be revoked or renewal refused only in the following manner:

The board may, after hearing, grant a limited license in such unsafe building, for a period to be determined by the board in hardship cases, provided, that the applicant shall have shown due diligence in attempting to correct such unsafe condition or moved to an approved location, and provided, further, that such licensee shall furnish liability insurance to hold the county harmless in an amount to be determined by the board of commissioners.

A revocation of a business license of failure to renew a business license as the case may be, shall be ordered only by the majority vote of the members of the board of commissioners present at the time when such matter was considered. (Ord. 1448 § 2, 1992: Ord. 1367 § 2, 1992: Ord.

134 § 24, 1961)

6.04.105 State license. No business license shall be issued by the director to applicants therefor in accordance with this title unless the applicant has obtained any required state license for the business profession and provide the department with a copy of the required state license. (Ord. 1608 § 3, 1994)

6.04.110 Compliance with zoning. No business license shall be issued by the director of business license to applicants therefor in accordance with this title unless the applicant shall have a fixed place of business in a proper zone in accordance with Title 29 of this code and shall actually carry on and conduct such business from the address for which the license shall have been issued. (Ord. 709 § 15, 1980: Ord. 621 § 15, 1979: Ord. 134 § 25, 1961)

6.04.120 Conducting business at location other than licensed. In the event a licensee shall conduct his business at a location other than the place for which the license was issued or shall fail to conduct his business at the place for which the license shall have been issued, the board of commissioners shall revoke such license forthwith and no new license shall be issued to such licensee without approval of the board of commissioners first having been obtained. (Ord. 134 § 26, 1961)

6.04.130 Permanent plate licenses for vending machines. Permanent plate licenses shall be issued for cigarette machines and other similar devices or machines, regardless of whether fees are paid annually, semiannually, or on any other basis according to the following method:

(a) Plate licenses shall be attached to the machine

licensed and shall be coded to indicate the license fee;

(b) Plate licenses for cigarette machines may be transferred from one machine to another at the same business location;

(c) Plate licenses for cigarette machines may be transferred from one approved location to another approved location with the approval of the sheriff and/or board of commissioners;

(d) Plate licenses shall remain the property of the county and shall be returned to the county upon termination of the license for any reason:

(e) Upon the approval of an application for additional licenses, the fee for such license shall be prorated so that the licensee's plate license fees will all be due and payable at the same time;

(f) Plate licenses shall be licensed at the rate of ten dollars per machine semiannually;

(g) A charge of ten dollars shall be made for the replacement of a lost, mutilated, damaged plate license or permanent license frame;

(h) Notwithstanding other provisions of this section, facsimiles of the license plates in form of a gummed label may be issued to the licensee; such facsimile shall be attached to the side of the glass not accessible to the general public and shall be so placed as to be easily read from outside the machine. (Ord. 313 § 92, 1969:Ord. 139, 1961: Ord. 134 § 27, 1961)

6.04.140 Penalty for violation. Except as otherwise specified, every person, firm, association, partnership, corporation, institution or agency violating any of the provisions of Chapters 4.08 and 4.09 Of Title 4 and Titles 6, 7 or 8 shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or

imprisonment of not more than six months in the county jail, or by both such fine and imprisonment. A separate offense shall be deemed committed on each day during or on which a violation occurs.

In addition to the penalties above-named any person, firm or corporation convicted of willfully violating any of the provisions of this code shall be subject to having his or its license to do business within the county revoked by the board of commissioners. (Ord. 1510 § 1, 1993: Ord. 847 § 3, 1983: Ord. 134 §§ 28, 30, 1961)

6.04.150 Authority to issue citations. Licensing agents, the director and the assistant director of the department of business license are authorized to prepare, sign and serve misdemeanor citations, pursuant to NRS Chapter 171 to enforce the provisions of Titles 4, 6, 7 and 8 of this code, and shall diligently prosecute the violation thereof. (Ord. 1608 § 4, 1994: Ord. 631 § 1, 1979)